

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lazer Broadcasting Corporation)	File Nos.: EB-08-LA-0344
Antenna Structure Registrant)	EB-08-LA-0345
ASR Nos. 1013829 and 1013830)	
Santa Barbara, California)	NAL/Acct. No.: 200932900003
)	FRN: 0000013466

FORFEITURE ORDER

Adopted: June 13, 2011

Released: June 15, 2011

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Lazer Broadcasting Corporation (“Lazer Broadcasting”), owner of antenna structure numbers 1013829 and 1013830, in Santa Barbara, California, for repeatedly violating section 17.57 of the Commission’s rules (“*Rules*”) by failing to immediately notify the Commission of a change in ownership information for these antenna structures.¹

II. BACKGROUND

2. On October 16 and October 17, 2008, an agent of the Enforcement Bureau’s Los Angeles Office (“Los Angeles Office”) inspected antenna structure numbers 1013829 and 1013830 located in Santa Barbara, California, which are a two-tower directional array for AM radio station KZER. At the time of the inspection, a search of the Commission’s Antenna Structure Registration (“ASR”) database revealed that both antenna structures were registered to Engles Enterprises Inc., d/b/a KTMS radio (“Engles Enterprises”).

3. On November 28, 2008, having been unable to contact Engles Enterprises, the Los Angeles agent contacted the corporate owner of Station KZER(AM), which was Lazer Licenses, LLC, a wholly-owned subsidiary of Lazer Broadcasting.² The agent was told by an employee that the antenna structures had been purchased several years earlier as part of the acquisition of the station from a previous licensee. The agent advised the Lazer employee that the antenna structures needed to be re-registered to the new owner as soon as possible and the employee stated that this would be accomplished. A

¹ 47 C.F.R. § 17.57.

² According to Commission records, Lazer Broadcasting became the licensee of Station KZER(AM) on January 7, 2004. See File No. BAL-20031103ACW, granted December 18, 2003, consummated January 7, 2004. On May 18, 2006, Lazer Broadcasting filed a FCC Form 316 to assign the licenses of Station KZER(AM) and several other broadcast licenses held by Lazer Broadcasting to Lazer Licenses, LLC. See File No. BAL-20060518ABI, granted May 26, 2006, consummated June 12, 2006. In this application, Lazer Broadcasting stated that “this transaction involves the assignment of the licenses of Lazer Broadcasting Corporation’s radio stations to a new limited liability company in which the licensee [Lazer Broadcasting] will be the sole member and the 100 percent equity owner.” *Id.* This application was granted on May 26, 2006.

subsequent review of the Commission's ASR database revealed that both antenna structures were registered to Lazer Broadcasting on December 4, 2008.

4. On March 10, 2009, the Los Angeles Office sent a letter of inquiry ("LOI")³ to Lazer Broadcasting. In its response to the LOI,⁴ Lazer Broadcasting reported that it had purchased antenna structure numbers 1013829 and 1013830 as part of the acquisition of the associated radio station on January 7, 2004.⁵ The response also stated Lazer Broadcasting's position that any violation of the Commission's tower registration rules was inadvertent and was timely remedied when brought to Lazer's attention by the Los Angeles agent.

5. On May 14, 2009, the Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL")⁶ in the amount of \$6,000 to Lazer Broadcasting, finding that Lazer Broadcasting apparently repeatedly violated section 17.57 of the Rules⁷ by failing to immediately notify the Commission of a change in ownership information for antenna structure numbers 1013829 and 1013830. Lazer Broadcasting filed a response on June 12, 2009.⁸ In its *Response*, Lazer Broadcasting argues that the forfeiture should be cancelled, because Lazer Broadcasting is not a licensee, or reduced, because there was no harm caused by its failure to update both antenna structure registrations.⁹

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act,¹⁰ section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Based on our review of the record and as discussed below, we find that reduction of the forfeiture amount is warranted.

7. Section 17.57 of the Rules requires the owner of an antenna structure to immediately notify the Commission, using FCC Form 854, upon any change in ownership information.¹⁴ Lazer Broadcasting acquired antenna structure numbers 1013829 and 1013830 in January of 2004 but failed to

³ See Letter of Inquiry from Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, to Lazer Broadcasting Corporation, dated March 10, 2009.

⁴ See Letter from Howard M. Weiss, Fletcher, Heald & Hildreth, to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated March 24, 2009 ("LOI Response").

⁵ See *supra* note 2.

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932900003 (Enf. Bur., Western Region, Los Angeles Office, released May 14, 2009).

⁷ 47 C.F.R. § 17.57.

⁸ See Response to Notice of Apparent Liability for Forfeiture from Lazer Broadcasting Corporation, filed June 12, 2009 ("Response").

⁹ *Id.*

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 C.F.R. § 17.57.

update the ownership information for the antenna structures until December 4, 2008, after an inspection by the Los Angeles Office.¹⁵ Accordingly, we conclude that Lazer Broadcasting repeatedly violated section 17.57 of the Rules by failing to immediately notify the Commission about a change in ownership for antenna structure numbers 1013829 and 1013830.

8. Lazer Broadcasting argues that because it is not a licensee, the Los Angeles Office was “procedurally incorrect” to issue a *NAL* in this case, and quotes section 1.80(d) of the Rules as stating “[n]o forfeiture penalty shall be imposed under this section, if such person does not hold a license, permit, certificate or other authorization issued by the Commission”¹⁶ Lazer Broadcasting argues that it is “merely a tower registrant” and the Los Angeles Office was required to issue it a citation rather than a *NAL*. We disagree. We first note that Lazer Broadcasting failed to quote the full section of the Rules applicable to this situation. Specifically, section 1.80(d) also states that “a forfeiture penalty may be imposed if such person is engaged in (and the violation related to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower.”¹⁷ The Commission amended section 1.80(d) of the Rules in 1993¹⁸ to conform to the recently amended section 503(b)(5) of the Act¹⁹ which provided that nonlicensee tower owners may be subject to forfeitures without a prior citation. As the licensee of Station KZER(AM), and admitted owner of antenna structure numbers 1013829 and 1013830 since 2004, Lazer Broadcasting had an obligation to update the registration of the two antenna structures when it acquired the antenna structures and the Station KZER(AM) license from Engles Enterprises, but it neglected to do so. Lazer Broadcasting again failed to update the registration for the antenna structures when it assigned its broadcast licenses to a wholly-owned limited liability company.²⁰ Accordingly, we find no procedural error on the part of the Los Angeles Office when it issued the *NAL* to Lazer Broadcasting and we decline to cancel the proposed forfeiture on these grounds.

9. Lazer Broadcasting also argues that the forfeiture amount should be reduced from \$6,000 to \$3,000 because both antenna structures were in the same AM tower array.²¹ Lazer asserts that violations concerning AM tower arrays should be treated as a single violation because the forfeiture amount for violations of section 73.49 of the Rules,²² which requires that AM towers be enclosed within effective locked fences or other enclosures, but does not require individual tower fences if the towers are contained within a protective property fence, are found under the note to section 1.80(b)(4) entitled “violations Unique to the Service.”²³ Lazer Broadcasting further argues that the degree of harm, which the Commission must take into consideration when assessing a forfeiture,²⁴ is the same whether there was

¹⁵ We note that the Commission has consistently held that an entity is expected to correct errors when they are brought to the entity’s attention and that such correction is not grounds for a downward adjustment in the forfeiture. *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21871-76 (2002).

¹⁶ *Response* at 2, citing 47 C.F.R. § 1.80(d).

¹⁷ 47 C.F.R. § 1.80(d).

¹⁸ *In the Matter of Amendment of Section 1.80(d) of the Commission’s Rules*, Order, 8 FCC Rcd 3052 (1993).

¹⁹ 47 U.S.C. § 503(b)(5).

²⁰ We also note that Lazer Broadcasting is also the registrant of antenna structure numbers 1045134, 1045135, 1045136, and 1045137, in East Highlands, California. Lazer Broadcasting acquired all of these structures in 2001 and successfully updated the ownership of each, indicating its awareness of the section 17.57 registration updating requirements.

²¹ *Response* at 2 – 4.

²² 47 C.F.R. § 73.49.

²³ 47 C.F.R. § 1.80(b)(4).

²⁴ *Response* at 3 – 4, citing *Forfeiture Policy Statement*, 12 FCC Rcd at 17098.

a failure to file one form or two given the proximity of the structure to each other.²⁵ Moreover, Lazer Broadcasting notes that the stated violation in the note to section 1.80(b)(4) is the failure to file “forms” not a single “form.”²⁶

10. The potential harm when there is a failure to update an antenna structure registration is the inability of the Commission or its staff to contact the antenna structure owner in the event of a problem with the antenna structure. Both antenna structure number 1013829 and antenna structure number 1013830 had painting and lighting requirements assigned by the FCC and each structure was required to be registered with the FCC. As the FCC gave each of the structures painting and lighting specifications, the Commission obviously determined that each of the structures individually required registration. The FCC does not always require painting and lighting for each structure in a multiple tower array. At times, the FCC finds that one antenna structure “shields” another structure and registration is not required.²⁷ While we do not agree with Lazer Broadcasting that the degree of harm is the same regardless of whether one form or two was filed, we note that in prior cases, where two or three antenna structures in the same AM radio array were not registered as required pursuant to section 17.4(a) of the Rules,²⁸ a single total forfeiture of \$3,000 for the violation of failing to register more than one tower in a multi-tower AM radio array was assessed.²⁹ Consistent with this precedent, because antenna structure numbers 1013829 and 1013830 are both owned by Lazer Broadcasting and are both part of the AM array used to broadcast Station KZER(AM), we reduce the forfeiture for failing to update the structures’ registrations pursuant to section 17.57 from \$6,000 to \$3,000. We caution Lazer, and all other current or future antenna structure registrants, that while we are treating the failure to update the antenna structure registrations in this AM array as a single violation, and assessing a \$3,000 forfeiture, we can foresee upward adjustments being made in the future for such violations based on a number of factors including, but not limited to, the number of antenna structures in the array, the duration of the failure to update registration, and the level of difficulty involved in contacting errant antenna structure owners.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended (“Act”), and sections 0.111, 0.311, 0.314, and 1.80(f)(4) of the Commission’s Rules, Lazer Broadcasting Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,000 for repeatedly violating section 17.57 of the Rules.³⁰

12. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.³¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications

²⁵ *Response* at 3 – 4.

²⁶ *Id.*

²⁷ See *In the Matter of Streamlining the Commission’s Antenna Structure Clearance Procedure*, Report and Order, 11 FCC Rcd 4272, 4279 – 4280 (1995).

²⁸ 47 C.F.R. § 17.4(a).

²⁹ See *Steve Williams d/b/a American Broadcasting of Texas*, Forfeiture Order, 19 FCC Rcd 17708 (Enf. Bur. 2004) (a \$3,000 forfeiture was assessed to an antenna structure owner who failed to register all three towers in a multi-tower AM radio array); *WSJM, Inc.*, Forfeiture Order, 19 FCC Rcd 17777 (Enf. Bur. 2004) (a \$6,000 forfeiture proposed to an antenna structure owner which failed to register two antenna structures in a two tower AM radio array was reduced to \$3,000 because the two structures were located at the same site).

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80(f)(4), 17.57.

³¹ 47 U.S.C. § 504(a).

Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Lazer Broadcasting Corporation will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Lazer Broadcasting Corporation, 200 South A Street, Suite 400, Oxnard, CA, 93030.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau